

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

## FULFILLIUM, INC.,

Plaintiff,

V.

RESHAPE LIFESCIENCES, INC. and  
RESHAPE MEDICAL,LLC ,

DefendantS.

Case No. 8:18-cv-01265-RGK-PLA

## **STIPULATED PROTECTIVE ORDER**

1     1. **GENERAL**

2     1.1. **PURPOSES AND LIMITATIONS**

3     Discovery in this action is likely to involve production of confidential, proprietary,  
4     or private information for which special protection from public disclosure and from use  
5     for any purpose other than prosecuting this litigation may be warranted. Accordingly, the  
6     parties hereby stipulate to and petition the Court to enter the following Stipulated  
7     Protective Order. The parties acknowledge that this Order does not confer blanket  
8     protections on all disclosures or responses to discovery and that the protection it affords  
9     from public disclosure and use extends only to the limited information or items that are  
10    entitled to confidential treatment under the applicable legal principles. The parties further  
11    acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does  
12    not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth  
13    the procedures that must be followed and the standards that will be applied when a party  
14    seeks permission from the court to file material under seal.

15    1.2. **GOOD CAUSE STATEMENT**

16    This action may involve trade secrets, customer and pricing lists and other valuable  
17    research, development, commercial, financial, technical and/or proprietary information  
18    for which special protection from public disclosure and from use for any purpose other  
19    than prosecution of this action is warranted. Such confidential and proprietary materials  
20    and information consist of, among other things, confidential business or financial  
21    information, information regarding confidential business practices, or other confidential  
22    research, development, or commercial information (including information implicating  
23    privacy rights of third parties), information otherwise generally unavailable to the public,  
24    or which may be privileged or otherwise protected from disclosure under state or federal  
25    statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of  
26    information, to facilitate the prompt resolution of disputes over confidentiality of  
27    discovery materials, to adequately protect information the parties are entitled to keep  
28    confidential, to ensure that the parties are permitted reasonable necessary uses of such

1 material in preparation for and in the conduct of trial, to address their handling at the end  
2 of the litigation, and serve the ends of justice, a protective order for such information is  
3 justified in this matter. It is the intent of the parties that information will not be designated  
4 as confidential for tactical reasons and that nothing be so designated without a good faith  
5 belief that it has been maintained in a confidential, non-public manner, and there is good  
6 cause why it should not be part of the public record of this case.

7 2. **DEFINITIONS**

8 2.1 Action: Fulfillium, Inc. v. ReShape Lifesciences, Inc. and ReShape Medical,  
9 LLC, United States District Court, Central District of California, Case No. 8:18-cv-01265-  
10 RGK-PLA.

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
12 information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it  
14 is generated, stored or maintained) or tangible things that qualify for protection under  
15 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
16 Statement.

17 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as their  
18 support staff and contractors).

19 2.5 Designating Party: a Party or Non-Party that designates information or items  
20 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
23 medium or manner in which it is generated, stored, or maintained (including, among other  
24 things, testimony, transcripts, and tangible things), that are produced or generated in  
25 disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter  
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
28 expert witness or as a consultant in this Action.

1           2.8    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
2   or Items: highly sensitive “CONFIDENTIAL Information or Items,” disclosure of which  
3   to another Party or Non-Party would create a substantial risk of serious harm that could  
4   not be avoided by less restrictive means.

5           2.9    In-House Counsel: attorneys who are employees of a party to this Action.  
6   In-House Counsel does not include Outside Counsel of Record or any other outside  
7   counsel.

8           2.10   Non-Party: any natural person, partnership, corporation, association, or other  
9   legal entity not named as a Party to this action.

10          2.11   Outside Counsel of Record: attorneys who are not employees of a party to  
11   this Action but are retained to represent or advise a party to this Action and have appeared  
12   in this Action on behalf of that party or are affiliated with a law firm that has appeared on  
13   behalf of that party, including support staff and contractors.

14          2.12   Party: any party to this Action, including all of its officers, directors,  
15   employees, consultants, retained experts, and Outside Counsel of Record (and their  
16   support staffs).

17          2.13   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
18   Material in this Action.

19          2.14   Professional Vendors: persons or entities that provide litigation support  
20   services (e.g., photocopying, videotaping, translating, preparing exhibits or  
21   demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
22   their employees and subcontractors.

23          2.15   Protected Material: any Disclosure or Discovery Material that is designated  
24   as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
25   ONLY.”

26          2.16   Receiving Party: a Party that receives Disclosure or Discovery Material from  
27   a Producing Party.

28          2.17   Related Action: Fulfillium, Inc. v. SV Health Investors, LLC, United States

1 District Court, Central District of California, Case No. 2:18-cv-09291-RGK-PLA.

2 3. **SCOPE**

3 The protections conferred by this Stipulation and Order cover not only Protected  
4 Material (as defined above), but also (1) any information copied or extracted from  
5 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
6 Material; and (3) any testimony, conversations, or presentations by Parties or their  
7 Counsel that might reveal Protected Material.

8 Any use of Protected Material at trial shall be governed by the orders of the trial  
9 judge. This Order does not govern the use of Protected Material at trial.

10 4. **DURATION**

11 Once a case proceeds to trial, court-filed information that was used in open court  
12 and previously designated as confidential or maintained pursuant to this protective order  
13 becomes public and will be presumptively available to all members of the public,  
14 including the press, unless compelling reasons supported by specific factual findings to  
15 proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v.  
16 City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing  
17 “good cause” showing for sealing documents produced in discovery from “compelling  
18 reasons” standard when merits-related documents are part of court record). After final  
19 disposition of this litigation, the confidentiality obligations imposed by this Order on  
20 information filed under seal but not introduced at trial shall remain in effect until a  
21 Designating Party agrees otherwise in writing or a court order otherwise directs. Final  
22 disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in  
23 this action, with or without prejudice; and (2) final judgment herein after the completion  
24 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
25 including the time limits for filing any motions or applications for extension of time  
26 pursuant to applicable law.

27 5. **DESIGNATING PROTECTED MATERIAL**

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each

1 Party or Non-Party that designates information or items for protection under this Order  
2 must take care to limit any such designation to documents or items that qualify under the  
3 appropriate standards. The Designating Party must designate for protection only those  
4 material, documents, items, or oral or written communications that qualify for protection.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
6 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
7 to unnecessarily encumber the case development process or to impose unnecessary  
8 expenses and burdens on other parties) may expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it  
10 designated for protection do not qualify for protection, that Designating Party must  
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 **5.2 Manner and Timing of Designations**. Except as otherwise provided in this  
13 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that  
14 qualifies for protection under this Order must be clearly so designated before the material  
15 is disclosed or produced.

16 Designation in conformity with this Order requires:(a) for information in  
17 documentary form (e.g., paper or electronic documents, but excluding transcripts of  
18 depositions or other pretrial or trial proceedings), that the Producing Party affix, at a  
19 minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (hereinafter “HIGHLY  
21 CONFIDENTIAL legend”) on the document.

22 (b) for testimony given in depositions, the Designating Party must identify the  
23 Disclosure or Discovery Material on the record, before the close of the deposition unless  
24 the parties agree after the close of deposition to designate the deposition transcript as  
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY.”(c) for information produced in some form other than documentary and for any  
27 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
28 the container or containers in which the information is stored the legend

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2       5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
3 to designate qualified information or items does not, standing alone, waive the  
4 Designating Party’s right to secure protection under this Order for such material. Upon  
5 timely correction of a designation, the Receiving Party must make reasonable efforts to  
6 assure that the material is treated in accordance with the provisions of this Order.

7       6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8       6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
9 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

10       6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
11 process under Local Rule 37.1, et seq. Any discovery motion must strictly comply with  
12 the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

13       6.3 Burden. The burden of persuasion in any such challenge proceeding shall be  
14 on the Designating Party. Frivolous challenges, and those made for an improper purpose  
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose  
16 the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
17 the confidentiality designation, all parties shall continue to afford the material in question  
18 the level of protection to which it is entitled under the Producing Party’s designation until  
19 the Court rules on the challenge. A Challenging Party seeking to challenge the designation  
20 of confidentiality must bring the challenge in the case in which the document was  
21 originally produced. Thus, a challenge to the designation of confidentiality of a document  
22 produced in this action must be brought in this action, and a challenge to the designation  
23 of confidentiality of a document produced in the Related Action must be brought in the  
24 Related Action.

25       7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

26       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
27 disclosed or produced by another Party or by a Non-Party in connection with this Action  
28 only for prosecuting, defending, or attempting to settle this Action. Such Protected

1 Material may be disclosed only to the categories of persons and under the conditions  
2 described in this Order. When the Action has been terminated, a Receiving Party must  
3 comply with the provisions of Section 14 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location  
5 and in a secure manner that ensures that access is limited to the persons authorized under  
6 this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
9 may disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
11 as employees and contractors of said Outside Counsel of Record to whom it is reasonably  
12 necessary to disclose the information for this Action;

13 (b) two (2) current officers, directors, or employees (including one or more  
14 In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for  
15 the litigation in which said information is produced, following identification of such  
16 individual to each of the other Parties and approval by the other Parties, such approval not  
17 to be unreasonably delayed or withheld, and who have signed the “Acknowledgment and  
18 Agreement to Be Bound” (Exhibit A);

19 (c) Experts (as defined in this Order) of the Receiving Party to whom  
20 disclosure is reasonably necessary for this Action and who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and Professional  
25 Vendors to whom disclosure is reasonably necessary for this Action and who have signed  
26 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (g) the author or recipient of a document containing the information or a  
28 custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit 1), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) Persons who appear on the face of the Designated Material marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as an author, addressee or recipient thereof; or persons who have prior knowledge of the contents of the document or thing, participated in events described or contained in the document or thing or in whose files the document or thing was found;

(b) Outside counsel of record for the Parties and Designating Parties to this action, as well as the partners, associates, agents and regularly employed staff and supporting personnel of such counsel to the extent reasonably necessary to render professional services in this action;

(c) A fact deposition witness or a trial witness that meets the limitations of Section (a) above; any 30(b)(6) deposition witness presented by the Designating Party; and any trial witness, provided that the Designated Material marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” has been or will be offered into

1 evidence by stipulation of the Designating Party, or by ruling by the Court.

2 (d) Designated Material marked “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY” may also be disclosed to independent experts (and the  
4 assistants, secretarial and clerical staffs of such independent experts), who are not  
5 employees of the Receiving Party and who are retained by a Party or its attorneys of record  
6 in this action to assist in the preparation of the case, such as independent economic,  
7 accounting or scientific experts or technical advisors, and to furnish technical or expert  
8 services in connection with this action, or to give expert testimony with respect to the  
9 subject matter thereof for the trial of this action, and who have also executed Exhibit A  
10 hereto;

11 (e) Outside document processing service providers, including duplicating,  
12 photocopying and document coding/scanning contractors. Notwithstanding any other  
13 provision of this protective order, access to “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” Information shall be permitted to such service providers  
15 without need for the completion of Exhibit A. The Party providing “HIGHLY  
16 CONFIDENTIAL” Information to an outside document processing service provider shall  
17 be responsible for that service provider’s compliance with the provisions of this Protective  
18 Order;

19 (f) Such other persons as the Designating Party may, in writing, agree or by  
20 order of this Court;

21 (g) the Court and its personnel; court reporters and their staff;

22 (h) professional jury or trial consultants, mock jurors, and Professional  
23 Vendors to whom disclosure is reasonably necessary for this Action and who have signed  
24 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (i) any mediator or settlement officer, and their supporting personnel,  
26 mutually agreed upon by any of the parties engaged in settlement discussions.

27 7.4 Use of Protected Material at Trial or Hearings. “CONFIDENTIAL” or  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items may

1 be used, relied upon and referred to in any testimony or other evidence presented at any  
2 trial, hearing or deposition conducted in connection with the disputes between or among  
3 the parties to this Action, so long as the person presenting such testimony or evidence is  
4 authorized to have access to such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY” Information or Items under the terms of this Order, and  
6 subject to any further order of this Court regarding confidentiality. This Order shall not  
7 limit a party's examination, at a deposition, hearing or at trial, of persons who are not  
8 authorized to receive “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” Information or Items under the terms of this Order, so long  
10 as such examination concerns “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” Information or Items that the witness authored or  
12 previously had access to or knowledge of, as demonstrated by the “CONFIDENTIAL” or  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items itself  
14 or by foundation testimony during a deposition, hearing or trial. This Order shall not  
15 prevent counsel from examining a witness in a good-faith effort to determine whether he  
16 or she authored or previously had access to or knowledge of “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items.  
18 Each party reserves the right to request at a hearing or trial that the courtroom be closed  
19 to the public and any non-qualified party representatives during the introduction of  
20 testimony or argument regarding or exhibits containing “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items.

22 **8. MATERIALS PRODUCED IN RELATED ACTION**

23 Fulfillium, Inc. agrees that Defendants, and their Outside Counsel of Record shall  
24 be entitled to share and discuss all materials produced in this Action with Outside Counsel  
25 of Record in the Related Action. Fulfillium, Inc. also agrees that documents it produces  
26 in the Related Action shall be deemed to have been produced in this Action and shall be  
27 treated as such. Fulfillium, Inc. agrees to provide copies of all discovery materials and  
28 discovery responses produced by Fulfillium in the Related Action to Defendants in this

1 Action in a timely and efficient manner upon Defendants' request. Defendants agree that  
2 Fulfillium may use the documents produced by Defendants in this litigation for use in the  
3 Related Litigation. The Parties' obligations with regard to confidentiality for any  
4 materials produced in the Related Action, or produced in this litigation but used in the  
5 Related Litigation, shall be the same as if the materials were produced in this Action.  
6 There shall be no limit in this Action on the ability to use or rely on materials or responses  
7 produced in the Related Action aside from those arising from this Protective Order, the  
8 Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules, or any  
9 other rules that would normally apply.

10 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
11 **OTHER LITIGATION**

12 If a Party is served with a subpoena or a court order issued in other litigation that  
13 compels disclosure of any information or items designated in this Action as  
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
15 that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall  
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena or  
20 order is subject to this Protective Order. Such notification shall include a copy of this  
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the  
25 subpoena or court order shall not produce any information designated in this action as  
26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
27 before a determination by the court from which the subpoena or order issued, unless the  
28 Party has obtained the Designating Party's permission. The Designating Party shall bear

1 the burden and expense of seeking protection in that court of its confidential material and  
2 nothing in these provisions should be construed as authorizing or encouraging a Receiving  
3 Party in this Action to disobey a lawful directive from another court.

4 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
5 PRODUCED IN THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-  
7 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-  
9 Parties in connection with this litigation is protected by the remedies and relief provided  
10 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
11 from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to  
13 produce a Non-Party's confidential information in its possession, and the Party is subject  
14 to an agreement with the Non-Party not to produce the Non-Party's confidential  
15 information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party  
17 that some or all of the information requested is subject to a confidentiality agreement with  
18 a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated  
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the  
23 Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this Court within 14  
25 calendar days of receiving the notice and accompanying information, the Receiving Party  
26 may produce the Non-Party's confidential information responsive to the discovery  
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
28 produce any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the Court. Absent a court order  
2 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in  
3 this Court of its Protected Material.

4 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
6 Protected Material to any person or in any circumstance not authorized under this  
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
8 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
9 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
10 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
11 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”  
12 that is attached hereto as Exhibit A.

13 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
14 **PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
16 produced material is subject to a claim of privilege or other protection, the obligations of  
17 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
18 This provision is not intended to modify whatever procedure may be established in an e-  
19 discovery order that provides for production without prior privilege review. Pursuant to  
20 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
21 effect of disclosure of a communication or information covered by the attorney-client  
22 privilege or work product protection, the parties may incorporate their agreement in the  
23 stipulated protective order submitted to the Court.

24 **13. MISCELLANEOUS**

25 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

27 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
28 Protective Order, no Party waives any right it otherwise would have to object to disclosing

1 or producing any information or item on any ground not addressed in this Stipulated  
2 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
3 evidence of any of the material covered by this Protective Order.

4       13.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
5 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
6 under seal pursuant to a court order authorizing the sealing of the specific Protected  
7 Material at issue; good cause must be shown in the request to file under seal. If a Party's  
8 request to file Protected Material under seal is denied by the Court, then the Receiving  
9 Party may file the information in the public record unless otherwise instructed by the  
10 Court.

11       14. **FINAL DISPOSITION**

12       After the final disposition of this Action, within 60 calendar days of a written  
13 request by the Designating Party, each Receiving Party must return all Protected Material  
14 to the Producing Party or provide confirmation that it has destroyed such material. As  
15 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
16 compilations, summaries, and any other format reproducing or capturing any of the  
17 Protected Material. Whether the Protected Material is returned or destroyed, the  
18 Receiving Party must submit a written certification to the Producing Party (and, if not the  
19 same person or entity, to the Designating Party) by the 60 calendar day deadline that (1)  
20 identifies (by category, where appropriate) all the Protected Material that was returned or  
21 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
22 compilations, summaries or any other format reproducing or capturing any of the  
23 Protected Material. Notwithstanding this provision, counsel are entitled to retain archival  
24 copies of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
25 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
26 product, and consultant and expert work product, even if such materials contain Protected  
27 Material. Any such archival copies that contain or constitute Protected Material remain  
28 subject to this Protective Order as set forth in Section 4 (DURATION). All Protected

1 Material including all hard and electronic copies, derivations and summaries thereof, may  
2 also be retained if it is required to be retained under a Party's retention policy or if it is  
3 subject to a legal duty to preserve existing at the conclusion of this Proceeding, provided  
4 that confidentiality is maintained in accordance with this Order. Finally, notwithstanding  
5 this provision, no Party shall be required to return or destroy any materials designated  
6 under this Order that may exist on any disaster recovery backup system.

7 **15. PROSECUTION BAR**

8       15.1 Patent Prosecution Bar. Absent written consent from the Producing Party,  
9 any individual who receives access to information that describes the structure and/or  
10 operation of a Party's product and that has not lost its confidential status shall not be  
11 involved in the prosecution of patents or patent applications relating to intragastric  
12 medical devices, including without limitation the patents asserted in this action and any  
13 patent or application claiming priority to or otherwise related to the patents asserted in this  
14 action, before any foreign or domestic agency, including the United States Patent and  
15 Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution"  
16 includes involvement in or advising regarding drafting, editing, approving or amending  
17 patent claims. To avoid any doubt, "prosecution" as used in this paragraph does not  
18 include such individual representing a party before a domestic or foreign agency  
19 (including, but not limited to, a reissue protest, *ex parte* reexamination, *inter partes* review  
20 or other post-grant proceedings) so long as such a practice does not involve drafting  
21 amended claims. In addition, no prohibition set forth in this paragraph shall apply to or  
22 result from any designated material that such individual had lawfully received or authored  
23 prior to and apart from this litigation, or to any other material not covered by this  
24 Stipulated Protective Order. This Prosecution Bar shall begin when access to such  
25 information is first received by the affected individual and shall end two (2) years after  
26 final termination of this action.

27       16. Any violation of this Order by a Party or persons who sign Exhibit A may be  
28 punished by any and all appropriate measures including, without limitation, contempt

1 proceedings and/or monetary sanctions.

2 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

3 DATED: April 23, 2019

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6 Paul L. Abrams

7 United States Magistrate Judge

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EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I read in its entirety and understand the Stipulated Protective Order that was issued by United States District Court for the Central District of California on \_\_\_\_\_ in case of Fulfillium, Inc. v. ReShape Lifesciences, Inc. and ReShape Medical, LLC, United States District Court, Central District of California, Case No. 8:18-cv-01265-RGK-  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: \_\_\_\_\_